PROCEEDINGS

OF A

COURT-MARTIAL,

HELD UPON

CAPTAIN PHILIP HAY,

OF THE

THIRD REGIMENT OF FOOT,

BY ORDER OF

MAJOR GENERAL HUNTER,

COMMANDING HIS MAJESTY'S TROOPS IN WEXFORD,

JULY 27, 1798.

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1798.

thus marked were
Brother Officers of
Mine R. R. Rowan

Rec. July 17, 1906

PROCEEDINGS of a Court-Martial, held by Order of Major-General Hunter, commanding his Majesty's Troops in Wexford, 27th July, 1798.

PRESIDENT.

Col. Wm. Earl of Ancram, *Mid-Lothian Cavalry.*

MEMBERS.

Lt. Col. Sir James Foulis, -	*Mid-Lothian Cavalry.*
Lt. Col. John Enys, -	*29th Foot.*
Lt. Col. Fran. James Scott,	*Dunbarton Fencibles.*
Lt. Col. Lord Fred. Montagu,	*29th Foot.*
Lt. Col. Thomas Eyre, -	*2d or Queen's.*
Maj. James Kirkman, -	*29th Foot.*
Maj. James Dewar, -	*Mid-Lothian Cavalry.*
Maj. James Gibson, -	*Dunbarton Fencibles.*
Hon. Maj. James Ramsay, -	*2d or Queen's.*
Capt. Thomas Inglis, -	*Mid-Lothian Cavalry.*
Capt. George Johnstone, -	*29th Foot.*
Capt. Robert Donald, -	*2d or Queen's*
Enſign and Adjutant Thomas O'Neil, - -	*29th Foot, Deputy Judge Advocate.*

CRIME.

Captain Philip Hay of the 3d Regiment of Foot or Buffs, charged with *appearing in Arms, and being in Rebellion againſt his* Majesty.

PLEADS NOT GUILTY.

Mr. John Tench, Sub-ſheriff of the County of Wexford, ſworn, ſaith,

That he belonged to Captain Boyd's troop, and when Colonel Maxwell, of the Donegal militia, ordered a retreat from the town of Wexford, he ſaw the priſoner with Captain Richards, and ſeveral more, at the gaol door; that the priſoner

priſoner was on horſeback and did not retreat with the evidence.

Court.—When you ſaw the priſoner at the gaol door, did he appear there as a rebel or not?

A. He did not appear to him as a rebel, but ſuppoſed he was attached to Captain Richards's corps.

Q. Did the Enniſcorthy cavalry, to which the priſoner ſeemed to be attached, retreat from the town with the reſt of the army?

A. Several of them did.

Priſoner.—Did Captain Richards retreat, with the part of his corps that went away that day?

A. He did not.

Arthur Murphy, of the Healthfield Cavalry, ſworn, ſaith,

That he rode down the ſtreet from the gaol, in ſearch of Captain John Grogan, on the day of the retreat from Wexford; he ſaw the priſoner on horſeback, but on his return from the gaol, does not recollect ſeeing him; and that in a few minutes afterwards, he ſaw the priſoner again, on horſeback, ſitting careleſsly.

Court.—Was the order for the retreat from the town, made public?

A. He does not know.

Q. Do you conceive the priſoner knew of the retreat?

A. Does not know for certain, but conjectures that he did know of the retreat.

Mr. William Kellet ſworn, ſaith,

That ſome time before the rebels came to the town, the priſoner came on board Captain Dixon's veſſel, where the evidence was, and remained there till Dixon the captain of the veſſel came from the rebels, who appeared in numbers on the ſhore. Some ſhort time after, Dixon came on board, the priſoner accompanied him to the ſhore, near the bridge, where the rebels were, he remained with them

ſome

ſome time, and then came back to the ſhip, and brought Captain Richards with him on ſhore. The evidence applied to the priſoner to bring him with him alſo, before the boat put off, which he refuſed, alleging, that though he might have intereſt enough to ſave one, he could not ſave all. Some ſhort time before the evidence went on ſhore, the priſoner came on board the veſſel, and brought Mrs. Richards with him on ſhore.——Mrs. Kellet applied to him to return for her, which he did, and accompanied her to the evidence's lodgings, and remained there that night, and he believes the enſuing night.—The evidence further adds, that the rebels were in a tumultuous and riotous manner about the door, and attempted to force in ſeveral times, to look, as they ſaid, for arms; that the evidence and the ladies in the houſe, begged the priſoner to go and diſperſe them; he repeatedly went out into the ſtreet at their requeſt, and very often ſucceeded; but ſometimes they would not go away till they compleated their ſearch for arms.—That he ſaw no more of the priſoner after Thurſday night, till the evening before the evidence left the gaol to be removed to the priſon-ſhip, when the priſoner came into the gaol-yard along with Captain Mac-Manus of the Antrim militia; he ſaid Captain Mac-Manus was his priſoner, and lodged him in gaol, and that he brought him from Gorey or thereabouts, and that he was attended by a rebel, who carried a muſquet.—The priſoner then wore a ſword.

Court.—Was the priſoner in uniform or coloured cloaths when he brought Captain Mac-Manus to gaol?

A. He wore a regimental great-coat, blue edged with white, to the beſt of his recollection.

Q. At the time that the priſoner firſt went on board Captain Dixon's veſſel, were you and the other people on board, priſoners to the rebels?

A. We did not conſider ourſelves as priſoners.

Q. When

Q. When the priſoner addreſſed the mob, did he do it in a tone of authority, and did they appear to know him?

A. He does not know, as he ſeldom quitted the room.

Q. When were you made priſoner, and by whom?

A. He was made priſoner the Monday following by a Captain Furlong, who took him to gaol; but he conſidered himſelf a priſoner ſome time before he left the veſſel.

Q. Is the captain you mention, the perſon now advertiſed, and ſtiled general of the rebels?

A. He is the ſame perſon.

Q. You have ſaid that the priſoner was in your lodgings a conſiderable time, had you, during that time, any converſation with him relative to the rebellion?

A. He does not recollect to have had any.

Q. At the time Captain Richards was on board, did you conſider him as a paſſenger, or that he only went on board to take leave of his family, with the intention of returning on ſhore to join his corps?

A. He conſidered him as a paſſenger.

Q. Did it appear to you that the priſoner was acting of his own free will, or by compulſion?

A. The priſoner ſeemed not to reliſh the buſineſs, to the beſt of his belief, from his conduct on board.

Q. Had you any reaſon afterwards, to change your opinion with reſpect to the priſoner's conduct at any other time?

A. The firſt evening the priſoner was at my lodgings, he did not appear ſo much diſtreſſed as he was on board, the rebels being in force in the town, and his brother, John Hay, being in the town that evening, and having great authority, might have had ſome effect on his conduct.

Priſoner.—Do you know that I was a volunteer with Captain Richards, and whether I was in the actions at

Enniſcorthy

Enniſcorthy and the Three Rocks, immediately before the Rebels took poſſeſſion of Wexford?

A. He heard that the priſoner fought with Captain Richards at or near Enniſcorthy, which was a day or two before the rebels entered Wexford; but knows nothing of the action of the Three Rocks.

Q. Did I go on board the ſhip with Captain Richards?

A. You might have done ſo, but I do not recollect.

Q. Do not you believe that Captain Richards and I went on board with the ſame intention, of eſcaping by water from the rebels?

A. I do ſuppoſe you did.

Q. Do not you believe, but for the treachery of Dixon, all the paſſengers might have eſcaped?

A. I believe they might.

Thomas Rudd, of the Enniſcorthy Cavalry, ſworn, ſaith,

That on the day Wexford was taken by the rebels, he went on board the veſſel with the priſoner, where he with others were ordered to give up their arms. In about an hour afterwards a boat came from the ſhore for the priſoner, and to take away any arms that were on board the veſſel; the arms were handed out, and in the act of ſo doing, the priſoner took the evidence's ſword, and buckled it round him. Some ſhort time after the priſoner returned again on board, and took the evidence on ſhore, with ſeveral others.

Court.—By whom were the arms ordered to be delivered up?

A. I cannot tell.

Q. For whar purpoſe did you and the priſoner go on board that day?

A. I went on board for the purpoſe of eſcaping from the rebels, and conceived the priſoner went for the ſame purpoſe.

Q. Did

Q. Did it appear to you, that the priſoner buckled on the ſword of his own accord, or was he deſired to do it?

A. I think of his own accord.

Q. Did he ſay any thing on taking the ſword?

A. Did not ſay any thing.

Q. When the priſoner returned on board the ſhip, was he armed?

A. He ſtill had my ſword on.

Q. Did you, on landing with the priſoner, meet any of the rebels, and had the priſoner any converſation with them?

A. A great many, and the priſoner converſed much with them, but does not know the ſubſtance of their converſation.

Priſoner.—Was I not fighting with you againſt the rebels at the battles of Enniſcorthy and the Three Rocks?

A. At Enniſcorthy poſitively you was, but at the Three Rocks, I do not know whether or not you were preſent; you retired to Wexford with me after the battle of Enniſcorthy.

Q. If the men who had come in the boat, ſaid they had come for you, would you not have been afraid to have refuſed?

A. Certainly I ſhould.

Captain King, of Captain Ogle's Corps, ſworn, ſaith,

That he ſaw the priſoner on the evening of the Day of the evacuation of this town; he came into the room at Mr. Lett's, where the evidence was, and converſed with the gentlemen then there, (Mr. Fitzgerald was one.) Does not know the purport of their converſation; but knowing the priſoner, ſpoke to him, and aſked him if he knew any thing of Mrs. King and his family; he did not anſwer directly, and in ſome time after repeated the ſame queſtion; he then ſaid, he believed he ſaw her, and the family; the priſoner then left the room, he did not ſee him afterwards.

Court.

Court.—Was the priſoner armed when you ſaw him at Mr. Lett's houſe?

A. I believe he was not.

The Court adjourned to eleven o'clock to-morrow, the 28th July.

William Carty, Farmer, near Enniſcorthy, ſworn, ſaith,

That ten or twelve days after Wexford was taken, he ſaw the priſoner at Enniſcorthy, at the houſe of Peter Redmond, where there were a good many people, who were principals among the rebels; they fixed or determined it there that a letter ſhould be written either to Mr. Bagnel Harvey or Mr. Edward Hay, to ſend the muſquetry of this town to Enniſcorthy, and from thence to Newtown-Barry. The letter was written by Matthew Sutton, and the priſoner took the letter, and put it in his pocket, as he ſuppoſes, to take it to Wexford.

Court.—How ſoon after Wexford was in poſſeſſion of the rebels, did you ſee the priſoner?

A. About three or four days after.

Q. Was he at large, or had he arms?

A. He was at large, and had no arms, to the beſt of my belief.

Q. At the houſe of Peter Redmond, when the rebels were met there, what was their opinion about the attack of Newtown-Barry?

Q. That when they got the muſquetry, they would go and take it; but without muſquetry, they could not take it.—The priſoner was amongſt them.

Q. Was the priſoner ordered to take the letter, or did he take it voluntarily?

A. It was handed to him by Sutton; the priſoner made no objection to take it; but does not know what might have been done to him, if he refuſed it.

Q. What ſituation did you underſtand the priſoner had in the rebel army, at the time you ſaw him at Enniſcorthy?

A. I do not think he had any, but merely riding with them.

Q. Was the priſoner under any reſtraint, or did he ſeem to act from his own free will?

A. He did not ſeem to be under any anxiety.

Q. Did you ſee the priſoner at any other times with the rebels?

A. Not after he took the letter.

Q. Did he ſeem to take a lead at the meeting you mention?

A. He ſat at the table between Patrick Sutton and his ſon, and did not take a lead more than the reſt.

Q. Did you ſee the priſoner, at any time, with arms or in uniform?

A. I did not ſee him with arms or in uniform.

Priſoner.—Are you not now a priſoner in Wexford gaol, and how often have you been in gaol, and on what charges?

A. I am now a priſoner in Wexford gaol, and have been there once before, for ſhooting, by accident, my own ſervant-maid.

Mr. William Toole, of Captain Boyd's Cavalry, ſworn, ſaith,

That early on Wedneſday morning, the 30th of May, and two following days, he was with Captain Boyd's corps, reconnoitering the paſſes of the town; he ſaw the priſoner riding along the different forces, as he ſuppoſed then on our ſide, he ſaw no more of the priſoner till ſome hours afterwards.—The rebels were in poſſeſſion of the town the ſame day; after he ſurrendered to the rebels, there were one or two men that claimed him as their priſoner.—He then met the priſoner on horſe-back

horſe-back on the bridge, who took charge of him, and ſaid he would protect him; he was then put in confinement in a lodging he had in town, and ſhortly after let go out about the town with a guard, and that on giving his word to the priſoner, that he would be ready to appear whenever called for.—Does not recollect hearing any thing more of the priſoner till next day, when he went to the place where he was, and ſhewed himſelf ready, when called upon by any of the officers of the rebel army: he ſaw the priſoner with two other Mr. Hay's ſome very ſhort time afterwards.—He underſtood from him, that they had more command over the rebels than he had. On the evening of Wedneſday he gave the priſoner a letter to Mr. John Hay, to the beſt of his recollection, to obtain permiſſion to take his wife and family out of the town.—He afterwards looked upon himſelf as out of the priſoner's protection. On Friday, the 1ſt day of June, as he believes, he ſaw the priſoner at the rebel camp at Vinegar-Hill, where there were a body of rebels paraded, with arms and pikes, both horſe and foot; they were ordered off by General Roche, and the priſoner ſeemed to be at their head, and to have the command of them.

Court.—You ſaid you waited on the priſoner, and that you was ready, if called upon by him, or any of the rebel officers; did you conſider the priſoner as a rebel officer?

A. I did conſider him as a rebel officer.

Q. For what purpoſe was the body commanded by the priſoner, ordered to Carrick Grew?

A. After they had marched off, I heard the General (Roche) ſay, that it was for the purpoſe of ſettling ſome Orangemen.

Q. Do you think the priſoner received thoſe orders from General Roche?

A. I ſuppoſe he did.

 Q. Was

Q. Was the priſoner in arms or in uniform at any time?

A. At Vinegar Hill he had a ſword on, does not recollect any particular uniform.

Priſoner.—Did you ſee General Roche after the converſation you had with him at Vinegar Hill, or do you know what became of him?

A. I ſaw no more of him.

Robert Pigott, of Captain Boyd's Cavalry, ſworn, ſaith,

That on the 30th of May laſt, in the morning, a party of the Donegal militia, under the command of Colonel Maxwell, and all the cavalry in the town of Wexford, formed together, to attack the rebels at the Three Rocks; as the troops were proceeding to the Three Rocks, the priſoner rode along the ranks; he then conceived him as a captain in the king's ſervice. —The priſoner happened to ſpeak to him, and ſaid, that he muſt not conſider they were going to attack an undiſciplined mob, as they were acquainted with military diſcipline, or words to that effect.—He ſaw no more of the priſoner till next day, when he himſelf was a priſoner, he then ſaw the priſoner at the head of one of the rebel lines, formed in the town of Wexford. Several days afterwards he ſaw the priſoner again, when he brought Captain Mac-Manus priſoner to gaol.—He then conceived him as a principal officer amongſt the rebels, as he had a man as an orderly ſerjeant attending him, who carried a firelock, advanced. The witneſs adds, that at the time the priſoner brought Captain Mac-Manus to gaol, he, the priſoner, had on an officer's uniform ſurtout-coat, blue edged with white, with a ſabre with a ſteel ſcabbard, buckled round him, ſuch as light-horſe-men wear.

Court. Did the priſoner act from compulſion or from choice

A. I believe

A. I believe from choice.

Q. What was the priſoner doing when you ſaw him at the head of the rebels in the town?

A. He did not ſeem to take any active part, but appeared to be waiting to be employed.

Priſoner.—Did not ſome perſons of the army, who marched againſt the rebels to the Three Rocks, appear to deſpiſe and undervalue them?

A. I did not hear any one do ſo.

Q. Do you believe that the rebels were victorious two days before at Enniſcorthy?

A. I do believe they were.

Q. Do not you believe that I, having been at the battle of Enniſcorthy, before you ſaw me at the Three Rocks, had an opportunity of knowing the nature of the rebel force?

A. I do believe you had an opportunity of knowing it.

Q. Did you ever hear a general-officer ſay, that the king's troops had deſpiſed the rebels too much?

A. I have heard it ſaid that the officers of the army thought meanly of the rebels.

James Cecil Solbury, an Inhabitant of Wexford, ſworn, ſaith,

That a few days after the town of Wexford was taken by the rebels, he ſaw the priſoner riding on a horſe which he had taken from a man who had him in charge; the owner of the horſe was at the ſame houſe with the evidence, and did not wiſh to part with him; upon which a converſation enſued between him and the priſoner; in that converſation, amongſt other arguments, the priſoner ſaid that his preſence was neceſſary at one of the rebel camps.

Court.—Who had the horſe in charge?

A. A man of the name of O'Brien.

Q. Do

Q. Do you ſuppoſe O'Brien was an officer in the rebel army?

A. I do ſuppoſe he was.

Q. Do you imagine, that unleſs the priſoner was a ſuperior officer to O'Brien, he would have given up the horſe?

A. I do not know whether the priſoner was his ſuperior officer or not.

Q. Was the priſoner armed, and how dreſſed?

A. He was dreſſed in a blue uniform jacket, with a ſabre ſlung at his ſide, with long belts.

Samuel Lahee, an Inhabitant of Wexford, ſworn, ſaith,

That about a few days after the king's birth-day, he ſaw the priſoner oppoſite the Cuſtom-Houſe-Lane in this town, mounted on horſe-back, with an armed mob around him; he was haranguing to them, but could not hear what was ſaid; he intended to apply to him for a protection, but had not an opportunity.

Court.—Did he appear to have any command amongſt them?

A. I imagine he had.

Q. Did he appear to act from compulſion or free-will?

A. I ſuppoſe from compulſion, as being an officer in the king's ſervice.

Q. You intended to have applied to him for a protection; do you not ſuppoſe he was an officer amongſt them?

A. I ſuppoſe he was a man of weight amongſt them.

Priſoner.—Do not you believe that many loyal perſons in this town and county, were, during the rebellion, compelled to do things very diſguſting to their principles, and that if they had refuſed to comply, they would have been murdered?

A. I am very certain they would.

Captain

Captain Mac-Manus, of the Antrim Militia, ſworn, ſaith,

That on the 4th of June laſt, he was taken priſoner, with two other officers, and between twenty and thirty privates of ſaid militia, near Gorey.—On that day he ſaw the priſoner, who afterwards came with him to this town, and walked with him up to the gaol, and ſaw him there lodged.—Shortly after he was taken, the priſoner rode up, together with ſeveral other perſons who were rebels; at that time the rebels, who had overtaken him, threatened to deſtroy him and his party.—From the reſpectability of the priſoner's appearance, he was induced to apply to him for a protection.—He does not recollect that he ſpoke to the people, but conceived that he received protection from that time.—He ſaw the priſoner frequently in the courſe of that and the following day.—It ſtruck the evidence as ſomewhat ſingular, that he ſhould appear dejected and low ſpirited when all around him ſeemed gratified and in high ſpirits at the ſucceſs of the day.—The next day on his way to Wexford, he had an opportunity of riding alone with the priſoner, for a ſhort way; he then told him, ſeemingly in a confidential manner, that he was forced, contrary to his wiſh, and to ſave his life, to join the rebels.—On our arrival in Wexford, he (the witneſs) begged of the priſoner, to deſire his ſervant to procure him a room in the ſame houſe he lodged in himſelf, which he believes the priſoner directed his ſervant to do.——He went to the lodging-houſe, and had ſcarcely arrived there, when a perſon of the name of Dixon, a rebel captain, came to him, and told him Captain Keugh wanted to ſpeak to him at the parade.——He attended on him.——Captain Keugh told him he muſt immediately proceed to priſon, whither the priſoner accompanied him.

Court.—Was you in charge of the priſoner when he attended you to gaol?

A. I conceive

A. I conceive that to prevent my being ſent to gaol in an ignominious manner, the priſoner undertook to conduct me there.

Q. Did he at any time appear to you to have a command, or in what ſituation did you conſider him, and how was he dreſſed?

A. He certainly did appear to have a command, and was dreſſed in a blue great coat, with white or buff edging, as he believes.

Q. Who conducted you to gaol beſides the priſoner?

A. I do not recollect.

Q. Do you think that from the priſoner's conduct in general, he was acting from his own free will, or by compulſion?

A. From the conſideration of his being ſo much out of ſpirits, and his declaration on the day he conducted him to Wexford, he ſuppoſes he acted *not* from his own free will in general.

Q. Did you at any time apply to be ſent to priſon, and to whom?

A. I did apply to Mr. Fitzgerald, who ſeemed to be the principal there, to be ſent to Wexford, rather than remain at Gorey—I had no idea of being ſent to gaol.

Q. Did the priſoner inform you he was an officer in the king's ſervice?

A. I think he did.

Priſoner.—At the time I appeared dejected, had not the rebel army obtained a victory over the king's troops under Colonel Walpole?

A. A very conſiderable one.

Q. Do you not believe it was my wiſh that you ſhould not be lodged in gaol, and that if I had influence enough to prevent it, I would have exerted it?

A. Moſt certainly. I believe it was your wiſh, and that if you had influence, you would have exerted it.

Q. Was

Q. Was not your paſs to Wexford from Fitzgerald, and not from me?

A. It was. Which paſs was taken from me by Captain Keugh.

Q. Did you ever ſee me draw up the men, or exerciſe any act of command?

A. Never.

Q. Did you ever ſee a regimental great coat of the Buffs?

A. Does not recollect ever to have ſeen one.

Adjourned to nine o'clock on Monday the 30th.

PRISONER'S DEFENCE.

MY LORDS AND GENTLEMEN,

I feel inexpreſſible happineſs in the opportunity which this trial preſents to me of vindicating my honor, and doing juſtice to my character. In the late melancholy and eventful period my ſituation was peculiar, and I ſtood ſurrounded by ſuch ſingularly embarraſſing circumſtances, that nothing leſs than this public inveſtigation could protect me from the effects of the prejudices conceived againſt me.

I truſt therefore that theſe circumſtances may ſufficiently apologize to the Court for the ſtatement with which I ſhall trouble them, and by which I hope to convince them and the world that I am incapable of the guilt imputed to me.

I left this country, of which I am a native, in the year 1791, and remained on the Continent (principally in Germany and Italy) for near four years. On my return to England, I had the honor of obtaining a commiſſion in his Majeſty's ſervice, and embarked for the Weſt Indies in 1796, without having returned once to this country from the time I firſt left it, except for the ſhort ſpace of ten days previous to my departure on foreign ſervice. While I was employed in

this ſervice my father died, having firſt bequeathed his fortune to me, though his youngeſt ſon, and my elder brother having ſhewn a diſpoſition to diſpute the validity of the will, and having taken poſſeſſion of the property, I returned to this kingdom at the entreaty of my friends to aſſert the rights to which my father's bounty entitled me. Theſe circumſtances involved me in the misfortune of law-ſuits with my brother, during the progreſs of which the event of a general election determined me to viſit this country. I had heard that my brother, whoſe late conduct has unfortunately too plainly manifeſted the nature of his political opinions, had exerted the influenee which the temporary uſurpation of my property gave him over the tenants of my eſtate, to oppoſe the candidate for the county who ſtood upon the intereſt of government. It hurt my feelings and principles, which were always thoſe of a loyal ſubject, that my tenantry ſhould be made the inſtruments of what appeared to me to be intended by my brother as a factious oppoſition to government, and I repaired to this county to prevent ſuch a conſequence, and I ſucceeded in preventing it. On that occaſion I remained in this county about a month, which, with the ſhort period immediately before I went on ſervice, was the entire time of my being in the county of Wexford from the year 1791, (ſeven years, no ſmall portion of my ſhort life) until a few days before the preſent, I truſt I may call it the late, rebellion broke out. I mention and ſhall prove theſe early facts, merely to ſhew that engaged as I had the honor to be in the ſervice of his Majeſty, far removed from the contagious ſcene of Iriſh politics and diſaffection, at variance with my family who had unfortunately for themſelves imbibed the fatal infection, I had no opportunity of being tainted by this poiſon; and that educated in the ſchool of a ſoldier, I was not likely to have yielded to ſuch an opportunity, if I had had it. During the tedious progreſs of this family litigation, and ſo lately as laſt January, being anxious for promotion in the ſervice, I expended a conſiderable ſum of money in the purchaſe of a troop

in

in a regiment of dragoons, a conduct certainly not conſiſtent with criminal intentions or diſloyal principles. Shortly afterwards the law-ſuit between my brother and me was terminated by a compromiſe, under which he was to reſign his pretenſions to the property, and I was to give him a ſum of money, and by the advice and urgent entreaty of a gentleman who was my counſel and my friend, I repaired to this county to effectuate the compromiſe and take poſſeſſion of my property. I ſay, the *urgent* entreaty, becauſe I was peculiarly anxious not to leave Dublin, to which a particular circumſtance at that time attached me, and to tranſact this buſineſs by deputing perſons in the country for the purpoſe, but I was overruled by the advice I have mentioned, and unfortunately for myſelf arrived in this county the 30th day of April, juſt twenty-ſix days before the rebellion broke out. Part of the compromiſe between my brother and me was that his furniture which was in my houſe, ſhould not be removed until he could diſpoſe of it by a public auction, which was accordingly advertized, and afterwards adjourned by my brother, whoſe motives for delay are now not difficult to be explained. On this account, and becauſe I was ill inclined to the ſociety and principles of my brother, I did not reſide at my own houſe, but remained waiting for this auction, at the houſe of Mr. Richards of Solſborough, a gentleman, the loyalty of whoſe principles is too well atteſted by the ſufferings of himſelf and his family. I employed this interval chiefly in a manner as highly gratifying to my feelings as it was conſiſtent with my duty. I employed it in reclaiming, as far as I could, the principles of my deluded tenantry, who had been ſeduced from their loyalty by the general corruption. By my influence, in that ſhort ſpace of time, they gave up ſeveral pikes and fire-arms, and 240 perſons took the oath of allegiance, and became, as I fondly hoped, faithful ſubjects and good members of the community. While I thus reſided at Mr. Richards's, and while I was thus employed, the rebellion broke out, ſuddenly, as is well known, on the

26th of May. With the permiſſion of Mr. Richards, I immediately joined his troop of yeomanry, as a volunteer, and in the firſt moments of the danger I went, at conſiderable riſque, to my own houſe to ſee how it was circumſtanced, and to endeavour, if poſſible, late as it was, to detach my own tenantry from the dreadful aſſociation. I there learned from a faithful ſervant the futility of ſuch a hope, and the magnitude of the public and of my individual danger. I flew back to the troop with incredible ſpeed and at great hazard. I continued to ſerve with them while a man ſerved, and though even on ſuch an occaſion as this, I ſhall never vaunt my own conduct, I will venture to ſay, as I ſhall eaſily prove, that my conduct at the battle of Enniſcorthy was that of a brave ſoldier and a loyal ſubject. When the ſmall but gallant force engaged there, was obliged to yield to ſuperior numbers, and had actually retreated, Mr. Richards expreſſed his anxiety for the females of his family who were in a houſe then on fire in the town. I offered to accompany him in a deſperate effort for their deliverance, we together undertook it, and while he ſaved his wife, I ſnatched his ſiſter-in-law from the flames, and carried her through the conflagration and the enemy, on my horſe before me. Upon this retreat I urged Mr. Richards and the troops to retire to Roſs as a place of greater ſafety than Wexford, but unfortunately my advice was overruled, for had it been adopted Mr. Richards and his family, and many others, would have been ſaved from much ſuffering, and my honor would have heen untarniſhed by ſuſpicion. We retreated to Wexford; when the troops marched to give the enemy battle at the Three Rocks, I accompanied them, and on this occaſion too I truſt my conduct did not diſgrace the cloth I wear. Suffer me here to remark upon the imputation which Mr. Pigot's teſtimony would faſten upon my conduct on this occaſion; I had ſeen the day but one before the fatal effects of too great a confidence in the diſcipline of a few troops, and too great a contempt of the tumultuous enemy. I thought I did my duty in endea-

vouring

vouring to counteract ſuch a deluſion, but I ſee plainly enough that no intentions are proof againſt the miſrepreſentations of a blind prejudice. Had my conduct been the very reverſe—had I depreciated the enemy, and repreſented them as irregular and not formidable, it would not have eſcaped the ſagacity of Mr. Pigott, that my wiſh was to lull the troops into a fatal ſecurity, and the very oppoſite of the conduct now imputed to me would have borne in his candid mind in the ſame direction upon my intentions. After this it was determined by thoſe in command to evacuate the town, and Mr. Richards and I, with many others, determined upon making an eſcape by water. Some of the evidence adduced has raiſed a miſconception that there was an order for a retreat, in which caſe I admit, though not on ſervice otherwiſe than as a volunteer, it would have been my duty to obey. But you will find that there was no ſuch order, that the town was abandoned in the utmoſt confuſion, and that Captain Richards and I, with many others, conceived that we would be enabled to effect an eſcape, and to join the King's troops in ſome other place with greater certainty by water than otherwiſe. We accordingly (a great number of us*) went on board a veſſel hired by Mr. Kellet for the purpoſe, but the maſter of which, Dixon, who is now a proclaimed rebel, betrayed thoſe who had ſo entruſted their lives to him. The rebels entered the town, Dixon left the ſhip, threatening ſhe ſhould be ſunk from the ſhore if we attempted to move her, and he left us priſoners on board: boats paſſed and repaſſed, a boat was ſent for me, and I was ordered a ſecond time, having refuſed to comply with the firſt order ſent to me, inſtantly to repair on ſhore, from which moment, at the urgent and inſtant peril of my life, I was compelled to join the rebel army. This compulſion I ſhall prove ſatisfactorily to this honorable court, but even if I could not, I truſt no diſpaſ-

* Several loyal and reſpectable perſons, and ſeveral military characters, attempted their eſcape in this manner, and many effected it.

ſionate

ſionate man who conſiders all my previous conduct, and who will hear all my ſubſequent conduct, can doubt that I was influenced by *compulſion* alone, and that of the *moſt violent* and *imperative nature*. Here I find it material to ſtate, that Mr. Rudd has certainly forgotten the particulars of the circumſtance of my taking his ſword, and indeed from the embarraſſment and confuſion of every perſon in that dreadful moment, it is not ſurprizing that the beſt memory ſhould be inaccurate. You will find the fact to be that I went on ſhore unarmed in the boat in which the arms were thrown, and that I was compelled to put on a ſword the moment I landed, which happened to be Mr. Rudd's, and which he recognized on me when I returned to the veſſel. Had I voluntarily armed myſelf at that time, I would have choſen my own ſword which lay among the others in the boat, and was in every reſpect preferable. Thus in the midſt of ten thouſand ferocious rebels I had no choice, inſtant death inflicted in the moſt barbarous manner would have been the fate of any man who had refuſed to join them, but my peculiar ſituation rendered the criſis in which I was placed doubly difficult, and the danger doubly imminent. I was an officer, and moſt probably they reckoned upon my profeſſional experience to aſſiſt their military projects. My two ill-fated brothers were engaged in their guilty ſchemes, and I was a Roman Catholic, profeſſing that religious faith which their enormities and their bigotry have diſgraced. Under all theſe circumſtances not to have appeared to join them would have been to enſure a certain and a torturing death. Thus ſituated, the part I had to act was of no ſmall difficulty. It is not my intention to trouble the Court with a recital of all the different particulars of the time I was in their hands. Such circumſtances as have been ſelected by the proſecution from that diſguſting journal of the moſt unhappy days of my life, I ſhall explain in evidence, I think, to the full ſatisfaction of every candid man who hears me; they are all conſiſtent with the ſtatement I have made of my ſituation, reduced as I was to the dreadful

neceſſity

neceſſity of ſuppreſſing and diſſembling all the genuine ſentiments of my heart, and of ſimulating feelings and aſſuming conduct abhorrent to every principle of my ſoul. I venture confidently to appeal to every diſpaſſionate man, and call on him to lay his hand on his heart and declare, whether he would have acted differently if ſimilarly circumſtanced; and whatever may be his preſent notions in this hour of ſecurity, and upon cool reflection, of the propriety or heroiſm of loſing his life rather than preſerve it by a pretended ſacrifice of his principles, whether he would in that dreadful moment ſurrounded as I was, by a banditti of ſavages, with their inſtruments of death pointed at his boſom, have thrown away to ſuch ruffians all his hopes of hereafter ſerving his king and his country.

I appeal with confidence to the recollection of many perſons for the notoriety of a fact eaſily proved, but almoſt too public to require proof, that ſome of the men moſt loyal to their ſovereign*, and moſt devoted to their religion, were compelled during the rebellion to fight againſt the one and abjure the other. To publicly renounce the religion they profeſſed is one of thoſe meaſures of extreme neceſſity which many were compelled to embrace; and though, under the circumſtances, it reflects no diſcredit upon them, it certainly points out the obvious diſtinction which ſhould be taken in all caſes between a compelled acquieſcence and the voluntary emotions of free agency.

I make this appeal to the honor and juſtice of this Court with the more confidence, becauſe this diſtinction between voluntary crime and compelled ſubmiſſion, is not only agreeable to the general notions of equity and good ſenſe, but is expreſsly recognized by the higheſt authorities. With the

* A long liſt of reſpectable names is here ſuppreſſed from motives of obvious delicacy. It is hoped all the perſons alluded to will feel a conſciouſneſs that they have deſerved this delicacy from Captain Hay, by the liberality with which they have ſince judged and ſpoke of his conduct while under circumſtances ſimilar to their own.

permiſſion

permiſſion of the Court, I ſhall read the opinion of one of the moſt reſpectable authors, an opinion founded upon the deciſions which governed all the caſes after the Scotch rebellion in 1745.

A Report of ſome Proceedings on the Commiſſion of Oyer and Terminer, and Gaol Delivery, for the Trial of the Rebels in the Year 1746, in the County of Surrey, and other Crown Caſes, to which are added, a few Diſcourſes upon ſome Branches of the Crown Law.

Chap. 2. Sect. 8. Diſcourſe on High Treaſon.

" The joining with rebels in an act of rebellion, or with " enemies in acts of hoſtility, will make a man a traitor, in " the one caſe within the clauſe of levying war, in the other " within that of adhering to the king's enemies; but if this " be done for fear of death, and while the party is under ac- " tual force, and he taketh the firſt opportunity that offereth " to make his eſcape, this fear and compulſion will excuſe " him; it is however incumbent on the party who maketh " fear and compulſion his defence, to ſhew to the ſatisfac- " tion of the Court and Jury, that the compulſion continued " during all the time he ſtaid with the rebels or enemies. I " will not ſay that he is obliged to account for every day, " week, or month, that perhaps would be impoſſible, and " therefore if an original force be proved, and the priſoner " can ſhew that he in earneſt attempted to eſcape and was " prevented, or that he did get off and was forced back, or " that he was narrowly watched, and all paſſes guarded, or " from other circumſtances which it is impoſſible to ſtate " with preciſion, but when proved ought to weigh with a " Jury, that an attempt to eſcape would have been attended " with great difficulty and danger, *ſo that upon the whole he* " *may be preſumed to have continued among them againſt his* " *will, though not conſtantly under an actual force or fear of* " *immediate death:* theſe circumſtances, and others of the " like

" like tendency, proved to the ſatisfaction of the Court and " Jury, will be ſufficient to excuſe him." *Sir Michael Foſter's Crown Law*, 216.

Thus wiſely and mercifully does the law weigh the motive while it decides upon the crime, but prejudice and reſentment do not thus diſcriminate: though it is rather extraordinary that the man who is ſo ready to put unfavourable conſtructions upon my conduct, ſhould himſelf be one of the moſt ſtriking examples of what compulſion can effect. Mr. Pigott was himſelf compelled to aſſiſt at the execution of an innocent man* in the ſtreets of this town, an act, which if abſtractedly conſidered, without reference to the circumſtances, would deſerve no leſs dreadful a name than that of murder; but which, ſituated as Mr. Pigott was, I have the charity to think of with other feelings than thoſe with which he has judged of my conduct.

The eſſence of guilt in all caſes, is the intention with which any act is committed; the hand and heart muſt go together; and certainly no tribunal will ever pronounce that conduct to be voluntary, which was not adopted till upon the laſt emergency and extreme compulſion, and after every effort to avoid it had been fruitleſsly exerted. Had my principles or intentions been ſuch as this proſecution would repreſent them, I need not have adhered to the defeated forces at Enniſcorthy, and after victory had declared for the rebels, and the troops had evacuated Wexford, I might have at once choſen the ſtronger party, and would ſcarcely have adopted the character of a fugitive, and attempted an eſcape, which but for the treachery of Dixon, I muſt have effected.

This conduct is as little conſiſtent with rebellion as all my former life, as my ſervices in his Majeſty's

* A priſoner was ſentenced to death by the rebels, Mr. Pigott and two other revenue officers were brought out to execute him; one of them ſhot him, and the others were compelled to carry his body to the water ſide and throw it into the river. Mr. Pigott and the other two were yeomen, who remained priſoners to the rebels, not being able to effect an eſcape.

army, as my conduct to my tenantry, as disarming them, and reclaiming them on the very eve of the rebellion; and indeed the crime imputed to me is still less reconcileable with prudence. By a voluntary adoption of the rebel cause, I must have risqued my commission, my honour and my life; and as to my property, my only chance of preserving it, depended on my loyalty; for you will find, from indisputable evidence, that one of the first exercises which my unhappy brother made of his new power, was to assert his dominion over my estate, in violation of his father's will, and of his recent compromise with me. But I think I should idly waste your time, were I to exculpate myself from the imputations of a premeditated disloyalty, and shall only repeat, that after I was compelled to join the rebellious, my conduct was, of necessity, obliged to be such as would not give them reason to doubt the sincerity of it: and yet difficult is the task of dissimulation; at least I found it so:—I was scarcely able to deceive the ruffians with whom my fate, for a moment, connected me; but I was never able to conciliate them. You have heard from Captain Mac-Manus that I was miserable and dejected in the moments of their greatest triumph; and you will find, by indisputable evidence, that I was the object of their eternal suspicion, and of their most restless vigilance; I was repeatedly on the point of being put to death in the moments of their resentment, and was incessantly exposed to their reproaches and invective. I was not a prisoner of war to a regular enemy, from whom I might have claimed those rights which civilized nations allow to captivity; but I was accidentally at the mercy of a rebellious and savage banditti, acknowledging no law but their own passions and caprices. My case did not, like that of the other prisoners, give me an election between imprisonment and joining the enemy; but from my connections and religion,

ligion, as I have before ſtated, to refuſe would have been held unpardonable, and *my* only alternative was death. A day ſcarcely paſſed in which my life was not threatened for my ſuſpected moderation; and you will find that the clamours of the mob called with equal and indiſcriminate impatience for my life, and thoſe of their priſoners. At times, in the indiſcretion of warm and indignant feelings, I declared ſentiments which provoked their reſentments and ſharpened their ſuſpicions; at other times I exerted myſelf to procure humane treatment for thoſe who had the misfortune to fall into their hands; and with ſuch barbarians, I need not inform this court, that humanity was a crime not to be forgiven. I at all times, even when ſucceſs appeared to have unequivocally declared in favour of the rebellion, and before the rebel cauſe had experienced a ſingle reverſe of fortune, confided my private ſentiments, my abhorrence of my ſituation, and my determination to eſcape from it, to every perſon to whom I could venture to unboſom myſelf, and perhaps oftener than was conſiſtent with diſcretion, relieved the unhappineſs of my heart, by the interchange of reciprocal ſentiments with thoſe whom I conceived to ſympathiſe with me. In this afflicting ſituation I waited impatiently the moment when I might eſcape from my miſery; and you will find, from the peculiar vigilance and ſuſpicious anxiety that I was guarded by, that the notion of an eſcape was a moſt adventurous and hazardous project; I however accompliſhed it through ſuch difficulties, and at ſuch imminent riſque, as will be deſcribed to you in evidence; and I inſtantly repaired to Dublin and communicated to government, I believe, the firſt information they received of the intereſting ſituation of this county. My ſtory to government was a plain one, ſuch as I have now ſtated and ſhall prove to you. I ſuppreſſed no fact, concealed no particular, and no one circumſtance has appeared in this

trial againſt me, which I had not before ſtated myſelf. Government was too wiſe and too liberal to attach guilt to misfortune, and to confound voluntary crime with dire and irreſiſtible neceſſity. I accordingly remained at large in Dublin, unaccuſed and unſuſpected, until the troubles in this county were at an end, and the ſubſiding alarms of thoſe who had ſuffered by them made way for their reſentments.—I impute blame, or prejudice, or vengeance to no man; but I ſuggeſt to the cool reflection of thoſe who can coolly reflect, that after ſuch ſufferings as the loyaliſts experienced here, the mind acquires a degree of inflammation, from which ſtrict impartiality, or accurate diſcrimination is for ſome time little to be expected.—In this temper of mind ſuſpicions were conceived againſt me, and the honourable confidence of a friend communicated them to me. I inſtantly and impatiently haſtened to the Commander in Chief, and entreated that a court-martial might be called upon my conduct, and that the ſevereſt inveſtigation might do juſtice to it.—General Lake, who knew my hiſtory, and conceived that it was generally known, conſidered my conduct above ſuſpicion, and with this declaration was pleaſed to refuſe my requeſt.—I continued ſtill at large, but ſuſpicion purſued me: vengeance, which is never nice in the ſelection of objects, called for an example: ſtrong and importunate repreſentations were made to government, and I am brought to this trial after the diſgrace of a public arreſt, and the rigours of a ſevere impriſonment. What I have now ſtated I ſhall prove to the ſatisfaction of this honourable Court, and I ſhall then with reſpectful confidence await their deciſion, with that firm hope which my heart and conſcience tell me is well founded, that their ſentence will not merely preſerve my life from the attack made upon it, but reſtore to me what is dearer than life, and what till now was my proudeſt poſſeſſion, the unblemiſhed honor of a gentleman and a ſoldier.

Mrs.

Mrs. Ogle ſworn.

Priſoner.—Do you recollect during the rebellion to have had any converſation with me?

A. I do. The priſoner called on me a few days after the rebellion began, he told me it was a meaſure he highly diſapproved of, he would take the earlieſt opportunity of quitting the rebels, and join our forces, all his actions with the rebels were for the purpoſe of making his eſcape from them, the only thing that induced him to join was his being threatened with immediate death, he told me he meant to make his eſcape to Dublin as ſoon as poſſible, to give every information to government reſpecting their proceedings.

Q. Do you not recollect my offering to execute any commands you might have for Dublin if I eſcaped with my life?

A. I do recollect it. I deſired the priſoner to call on my brother in Dublin, and to let him know I was well and ſafe at Wexford.

Q. Have you heard I did ſo, and that I dined with your brother the day I arrived in Dublin?

A. My brother has written word to that purpoſe, and ſays that the priſoner gave him the firſt intelligence of my being alive and ſafe at Wexford.

Captain Richards ſworn.

Priſoner.—Do you recollect the period I came to this country before the rebellion?

A. I do recollect the time, it might be a fortnight or three weeks before the rebellion.

Q. Do you recollect on what occaſion I came?

A. You came to ſettle ſome family affairs, your property being diſputed by your brother.

Q. Do you know whether or not before that time my brother Edward and I were on good terms?

A. I believe not from the time you came laſt to Ireland.

Q. Do

Q. Do you recollect where I reſided for theſe three weeks?

A. You in general ſlept at my houſe: you very often went to Ballynkeel, your own place of reſidence.

Q. Were not the people of this county very much ſeduced from their allegiance about that time, and what was my conduct to my tenantry and neighbourhood?

A. They had been very much ſeduced from their allegiance: you requeſted at different times that I as a magiſtrate would go to Ballynkeel to adminiſter the oath of allegiance to your tenantry and people of the neighbourhood: I went there, and adminiſtered the oath, firſt to the priſoner, then to the prieſts, and afterwards to a great number of people.

Q. Do you believe that it was at my inſtance theſe people took the oath of allegiance?

A. It was at your inſtance they aſſembled to take it.

Q. Do you recollect my having got ſtruck off ſome hundreds of blank certificates of the oath?

A. I do recollect your having got a number of them.

Q. Do you recollect what my ſentiments were with reſpect to the political principles of my brother Edward?

A. From ſome converſation you had with me, you expreſſed your diſapprobation of your brother's conduct.

Q. What is your opinion of the loyalty of my conduct at that time and before?

A. I certainly at that time and before conſidered you as a loyal man from the frequent converſation I had with you, having always expreſſed yourſelf in the moſt loyal manner.

Q. When the rebellion broke out, did I not join your corps?

A. You requeſted to join the troop, and I allowed you to do ſo, and gave you arms for that purpoſe.

Q. What was my conduct at the battle of Enniſcorthy?

A. I really thought you behaved as well as any man could do, as you were near me the whole time.

Q. Do

Q. Do you recollect my ſaving ſome of your men, by deſiring them to ſtoop when behind a wall, expoſed to the enemy's fire, and when they could not charge?

A. I do.

Q. Do you recollect my ſaving ſome of the ladies of your family at great riſque?

A. I do. You carried away Mrs. Richards's ſiſter on horſeback through the fire after the troops had retreated.

Q. Do you recollect on retreating from Enniſcorthy, that when the troops came to the turn to Roſs, I adviſed that they ſhould go there and not to Wexford?

A. I believe the advice was given by you.

Q. Do you recollect my adviſing you to take a ſafer road than the troops did on retreating?

A. I do recollect ſuch advice.

Q. Did I not go to the battle of the three Rocks, and was not my conduct there ſatisfactory to you?

A. You did go there, and I had no reaſon to find fault with your conduct, as you behaved as well as any man of the troop.

Q. What was the ſtate of Wexford after the retreat from the three Rocks?

A. Wexford was in very great confuſion.

Q. Was there any general order for retreating from Wexford to your knowledge, or did you hear any retreat beat?

A. I received none, nor heard any retreat beat.

Q. Did we not then agree to go together on board a veſſel and make our eſcapes, and join the troops elſewhere?

A. We did agree and went on board.

Q. Do you know who hired the veſſel for the purpoſe mentioned?

A. I heard the veſſel was hired by Mr. Kellet or Mr. Crump.

Q. Do not you recollect our offering a thouſand pounds to the captain to take us ſafe off?

A. I recollect

A. I recollect our offering a very large ſum.

Q. Did not I ſhew as much anxiety to make my eſcape as any other perſon?

A. I think you did.

Q. Do you recollect my having borrowed a guinea from you to give the boatmen, who brought us on board?

A. I gave you a guinea for that purpoſe.

Q. Did not Dixon the captain go on ſhore by himſelf?

A. I recollect his going on ſhore, whether alone or not cannot ſay poſitively.

Q. Do you recollect whether I went on ſhore with Dixon?

A. I believe you did not.

Q. Do not you recollect a boat being ſent from the ſhore, ordering me and all the arms to be taken on ſhore, otherwiſe the veſſel would be ſunk?

A. I do recollect a boat being ſent for the arms, and with the threat, and I believe for the priſoner, but am not poſitive.

Q. Do you recollect ſeeing me put on any ſword in going into the boat?

A. I did not ſee you put on any ſword.

Q. Did I not during the rebellion expreſs my diſapprobation of it, and my intention of eſcaping when an opportunity offered, and my having joined in it at the riſque of my life?

A. You told me you diſapproved of the rebellion, that you would eſcape as ſoon as you could, and deſired me tell your friends of your intention, and to clear your character in the event of your falling in the attempt to eſcape, and that you joined them to ſave your life, or words to that effect, and you requeſted me to keep your intentions ſecret.

Q. Do not you believe that if I had not affected to join the rebels, circumſtanced as I was, I ſhould be put to death, and from your general knowledge of me, do you conceive me

me capable of being for an inſtant voluntarily a diſloyal ſubject?

A. Circumſtanced as you were, you would have run greater riſque than others, in not affecting to join them, and from the opinion I then had of you, I could not conceive you to be voluntarily a diſloyal man, and your coming to me, when priſoner, confirmed the opinion I formerly entertained of you.

Q. Do you know of what religion I am?

A. You are of the Roman Catholic religion.

Q. Do you recollect on my expreſſing an anxiety about you, that my brother ſaid, I would have enough to do to ſave myſelf?

A. I do recollect the circumſtance.

Court.—Is it your opinion that the priſoner knew of the retreat of the troops from Wexford?

A. I believe he knew of the retreat.

Q. Do you think the priſoner could have retreated from the town that day if he wiſhed it?

A. I at that time thought he could not.

Q. Did not many loyal ſubjects prefer eſcaping by ſea to any other mode?

A. I believe they did.

Q. Was not the priſoner for ſome time under an arreſt at Enniſcorthy, and did not ſome of your own troop there declare they ſuſpected him, and what expreſſions did they make uſe of on that ſubject?

A. The priſoner was not under an arreſt to my knowledge, ſome of my troop ſuſpected there were improper meſſages ſent from him to his houſe, and diſapproved of it: if the priſoner had been under an arreſt I muſt have known it: it was after the ſuſpicion took place, the priſoner applied to me, to be admitted into the corps, and from my ſuppoſing him to be a loyal ſubject, agreed to it, and mentioned to Mr. Ogle in Wexford after the retreat, that I was glad to find,

notwithſtanding the ſuſpicion, that the priſoner behaved as a loyal man.

Priſoner.—Do not you recollect that the reaſon of my ſervant coming to town was to inform me that two of my houſes had been burnt?

A. You mentioned that your ſervant delivered ſuch a meſſage.

Court.—Did not the priſoner tell you, that his brother managed the howitzers at the Three Rocks?

A. I do not recollect with reſpect to the howitzers, but he ſaid, his brother John commanded on that day.

Priſoner.—Do you recollect whether it was not after I landed from ſhip-board, that I gave you that information?

A. I do not recollect.

Court.—Did it not appear to you, that in conſequence of the priſoner's protecting you and ſeveral others, he muſt have had conſiderable influence with the rebels?

A. I conceive he muſt have had influence with his brother John, and with his relation Fitzgerald, but more ſo with his brother, conſequently could protect me.

Q. Did you ever hear that the rebels declared, after Wexford was taken, that they ſhould have all been cut to pieces at Enniſcorthy, had it not been for the exertions of the priſoner?

A. A man of my troop, who was wounded, and in gaol, mentioned to me, that he heard ſome rebels declare, that they were aſſembled at the chapel, where the priſoner was deputed to go with a meſſage, and that in conſequence of the information the priſoner gave them, they marched off, and that Ogles and Captain Richards corps muſt have cut them to pieces, as they were not compleatly armed.

Priſoner.—On the day I was ſent from Enniſcorthy to my own houſe at Ballynkeel, to ſee if the rebels were aſſembled there, according to a report heard in town, did I not apply to a ſerjeant of your troop, who has the character of a loyal man,

man, to accompany me, but he was prevented ſo doing by other buſineſs?

A. A Mr. Pounder, who is ſerjeant of my troop, and who I believe is as loyal a man as exiſts, told me that the priſoner applied to him to go with him to Ballynkeel, when ſent on that buſineſs, but he did not accompany him.

Court.—On the whole, do you think that you yourſelf, or any loyal ſoldier might have been compelled to act as the priſoner did, in a ſimilar predicament?

A. I refuſed to join the rebels, but the priſoner ran a greater riſque by a refuſal than I did, from his being a Roman Catholic, no loyal man could be induced to join them, unleſs with a hope of eſcaping from them as ſoon as he could.

Lord Tyrone ſworn.

Priſoner.—Have not I had the honour of your lordſhip's acquaintance in Italy and Germany, in the years 1793 and 1794?

A. You had.

Q. What was your lordſhip's opinion of me during that acquaintance?

A. Good.

Q. Does your lordſhip recollect, on my arrival at Carlow after making my eſcape, what paſſed between us?

A. The priſoner came to me, and told me that he was in two battles againſt the rebels, and in a battle with them.—That he was upon his way to Dublin.—That he would give every information that was in his power concerning the rebels, and aſked me if I would adviſe him to go to General Loftus, and give him information alſo; that night ſome altercation having happened between two gentlemen, which I was obliged to ſettle, we parted; the priſoner aſked me at what time he could call on me in the morning, on which I replied, between ſix and ſeven, as nearly as I recollect.

—He called on me, and wrote down the commanding officers of the rebels names, and the quantity of ammunition as nearly as he knew, and the number of priſoners that were in Wexford.

Q. Does your lordſhip recollect my telling you I was forced to join the rebels?

A. I do.

Q. Do you recollect my conſulting you about going to General Loftus, and that you conſidered my going to Dublin of greater conſequence?

A. I do recollect, and thought it was of greater conſequence.

Court.—On what day did you ſee the priſoner at Carlow?

A. On Tueſday the 12th of June.

Q. From your knowledge of the priſoner, do you conceive him to be a man likely to be voluntarily engaged in rebellion againſt his king?

A. I do not.

Mrs. Kellet ſworn.

Priſoner.—Did you not go on ſhip-board with an intention to eſcape the day that Wexford was taken?

A. I did.

Q. Did you not ſee me there?

A. I did.

Q. Do you recollect a boat being ſent from on ſhore by the rebels, requiring my attendance there?

A. I do perfectly.

Q. Did not Captain Dixon leave the ſhip before I did?

A. He did for a long time.

Q. Did I comply with the order ſent by the rebels in the firſt boat?

A. You did not.

Q. Was

Q. Was not there a ſecond boat ſent with a threat for me and the arms to go on ſhore?

A. As to the arms I cannot ſay poſitively, but there was a ſecond boat ſent for the priſoner.

Q. Did I not tell you on leaving the veſſel, that if my life was ſpared I would come back and do what I could for you?

A. You did.

Q. Did you not afterwards ſee me in the town of Wexford, and did I appear to act from compulſion or voluntarily?

A. I ſaw you afterwards, and to the beſt of my belief you acted from compulſion.

Q. Do you not recollect a party of the rebels having ſeveral times, in a threatening manner, and once in particular, aſked for Captain Richards and me, and what happened on that occaſion?

A. They burſt into the room and demanded the priſoner and Mr. Richards, and ſeemed moſt anxious for the priſoner, by often calling his name; they ſearched every part of the room except a cloſet, which I had locked, and given the key to my ſiſter; I told them the priſoner was not there; ſome of them did not ſeem to believe me, on which I begged of my ſiſter to unlock the cloſet to ſhew them he was not in it; one man went over and looked into it.

Q. Have you ever over-heard the rebels ſpeak of me, and in what manner?

A. I heard them ſpeak ſometimes; they did not appear to me to have the ſmalleſt dependance on you; the lady in the room came over to me, and ſaid it was not ſafe to have you in the houſe, as the rebels intended to murder you, with a view of giving your property to your elder brother, and pointed out the man who made uſe of the expreſſion.

Q. Did

Q. Did I not appear to be in danger of loſing my life by the rebels?

A. I thought you very often in danger.

Armſtrong Brown, Eſq; late a Captain in his Majeſty's Service, ſworn.

Priſoner.—Were there any orders for a retreat the time the troops evacuated Wexford?

A. Not that I heard, I received none, I was an officer on duty here at the time.

Q. Did you ſee me after the rebels had poſſeſſion of Wexford, and did I appear to act from compulſion or free agency?

A. I did a ſhort time after, you acted from compulſion I am firmly convinced; from what paſſed at the time, and from what I formerly heard from you, I have not the ſlighteſt doubt on the ſubject.

James Hughes, an Inhabitant of Wexford, ſworn,

Priſoner.—Was not you an aſſiſtant at the poſt-office the day the rebels took the town?

A. I was.

Q. Did you conſult me about ſome letter bags which came in by water from Dublin, and what paſſed?

A. I did.—The priſoner was at the poſt-office, he conſulted him as to what he was to do with ſome letter bags which came by water to Wexford; he aſked me if I had let any one know that the bags were there, and on my ſaying not, he deſired me to hide them leſt the rebels ſhould get at them, and get intelligence from them.

Q. Was not this converſation after the rebels had poſſeſſion of the town, and after Mr. Kellet and Mr. Richards's family returned from on board a ſhip?

A. It was.

Court.—Did not the priſoner give you a protection?

A. He did not.

Q. Was

Q. Was not the priſoner's name written with chalk on the door and window ſhuts of your brother's houſe as a protection to it?

A. The name of Captain Hay was written, but for what purpoſe I cannot tell.

The Court adjourned to eleven o'clock to-morrow, the 31ſt July, 1798.

Matthew Doogan, of the Pariſh of Ballyhuſcar, ſworn.

Priſoner.—Was you on the bridge the day the rebels got poſſeſſion of Wexford?

A. I was.

Q. Did you ſee me land from a boat on that occaſion, and what happened?

A. I did ſee you; a man attacked you with a ſpit, and ſwore he would run you through if you did not go on along with him; and then another man of the rebels took up a ſword out of the boat, and put it about you, and inſiſted you ſhould wear arms.

Q. Were there many of the rebels about there, and were they armed?

A. A great many ſurrounded you immediately.

Q. Was not that ſpit pointed at my breaſt?

A. A rebel held the point of it up againſt your breaſt, and ſwore he would run you through if you did not march on.

Q. What do you think would have happened to me if I refuſed to join them?

A. I think you would have ſuffered preſent death.

Q. Had you ever an opportunity afterwards of knowing what opinion the rebels had of me?

A. I had.

Q. What was it?

A. I heard

A. I heard a general cry among the rebels that they ought to kill you, as you did not join the cauſe as you ought to do.

Q. Do you know whether I was watched by them or not?

A. I ſaw a guard over you at Gorey; they would not even let one of the priſoner's own tenants in to ſpeak to him, from the fear they had he ſhould make his eſcape.

Q. Did I appear to you to have any command amongſt them?

A. I never ſaw you take the leaſt command; when any one applied to you for ammunition, you deſired them to go to their own captain, as you had no call to it.

Q. Were not the roads and paſſes ſtrictly guarded by the rebels, and would it not have been dangerous to effect an eſcape?

A. They were guarded, and it would be dangerous to you as every one in the camp ſuſpected you, and kept a continual eye over you, and had no opinion of you at all.

Court.—What ſituation was you in at Gorey?

A. I was one of the rebels, but ſince got a protection.

Q. Was you at Vinegar-Hill, and did you ſee the priſoner there with a party of rebels?

A. I was at Vinegar-Hill, and ſaw the priſoner there with a party of rebels.

Q. Do you think, by the oath you have taken, the priſoner was acting with the rebels by compulſion or of his own free-will?

A. By my oath, I think by compulſion.

Q. By the oath you have taken, have you lately had any converſation with the priſoner, or have you been told

told what you were to ſay, in giving your evidence before this court?

A. By virtue of my oath, I had no converſation with him, nor was told what to ſay.

Priſoner.—You ſaid you ſaw me at Vinegar-Hill, had I any command there?

A. What commands were given were by Roche and Murphy; I never knew you to give any commands.

Michael Hayes of Ballymurn, ſworn.

Priſoner.—Did you ſee me land on Wexford bridge from a boat, the day the rebels got poſſeſſion, and did you ſee any one do or ſay any thing to me, and what was it?

A. I ſaw you land from a boat, and ſaw a man point a ſpit at you, and threaten you, that if you would not march he would have your life; another man then handed a ſword out of the boat, and inſiſted on his putting it on you, and there were great numbers of rebels around you.

Q. Do you recollect that any more than one man threatened me?

A. There were numbers continually threatening you.

Q. Did not you ſee me at Vinegar-Hill, and know me to be obliged to march off with the party, and who commanded it?

A. I did ſee you, and knew you to be obliged to march off with the party, which was commanded by Edward Roche.

Q. Did you not go with the party, and do you recollect what orders Roche gave on the road?

A. I did; Roche was taking guns from ſome men, and giving them to others who could uſe them, and ordering us to ſuch places where we could get ſomething to eat and drink, and ordering the neighbouring people to follow us with proviſions.

Q. Did I, during that march, take upon me to give any orders?

A. You did not.

Q. Do you know the general opinion the rebels entertained of me, and if I was threatened or in danger?

A. They had not a good opinion of you; they ſaid if you did not appear at Vinegar-Hill that day, that they would have put you to death.

Q. Do you know whether the roads and croſs-roads were guarded, and whether it would have been eaſy to eſcape?

A. The roads and gaps were guarded, and a paſs-word given, without which no one was allowed to paſs.

Court.—How do you know that the priſoner was compelled to march with Roche's party, and did he carry arms on that occaſion?

A. Becauſe he was threatened to be murdered if he did not go.—He wore a ſword, but never ſaw him draw it.

Q. For what purpoſe did the party march from Vinegar-Hill, and did the priſoner take an active part with that detachment?

A. It marched for the purpoſe of taking Gorey; he did not take an active part.

Q. Can you poſitively ſay, whether it was on board the boat or on the bridge, the ſword was put on the priſoner?

A. It was put on on the bridge, given out of the boat by one man, and put on the priſoner by another.

Priſoner.—Amongſt the party who marched from Vinegar-Hill, were not there many on horſe-back as well as myſelf?

A. There were numbers.—I myſelf was on horſe-back.

Matthew Dempſey, ſworn.

Priſoner.—How long have you lived in my family, and in what capacity?

A. I lived

A. I lived almeſt nineteen years in the capacity of butler, with your father.

Q. Do you recollect on my laſt coming to the country my exerting my influence with my tenantry for any particular purpoſe, and what was it?

A. I do recollect the priſoner ſaying, if there was a diſturbance in the country, he ſhould ſhortly be quartered at Carlow with a party of horſe, and that he would bring forty or fifty men who would ſettle the diſturbance; he heard him adviſe his tenantry to be quiet and civil, otherwiſe the country would be ruined; if they were not, he would be the firſt perſon himſelf who would make them ſo.

Q. Do you recollect my having perſuaded any people to take the oath of allegiance, and give up their arms?

A. I do.

Q. Do you know of my brother's auction being poſtponed, and if that was not the cauſe of my detention in the country, and who poſtponed it?

A. The auction was poſtponed by your brother, and that detained you in the country.

Q. Do you recollect my making any preparation to leave the country, ſhortly before the rebellion broke out, expecting the auction would not be poſtponed?

A. I recollect it, and took a load to a carman, to be taken to Dublin, and to call again for a portmanteau two days after, as you was going to Dublin *that* day.

Q. Do you recollect my going to my own houſe on Whitſunday, by the direction of Mr. Ogle and other gentlemen, to know if the rebels aſſembled there, according to a report that was ſpread in Enniſcorthy, and what paſſed between us when there?

A. I do recollect on your arrival at the houſe, you aſked if there was any diſturbance; I told you that the rebels came and demanded the arms and pikes, and threatened my life if I did not give them up: you aſked then where they

were gone, and on anſwering they were diſperſed, you got a freſh horſe, and went back to Enniſcorthy.

Q. Were thoſe not the arms and pikes which I perſuaded thoſe who took the oath of allegiance to give up?

A. They were.

Q. Do you know how I effected my eſcape, and relate it?

A. He told me he was in danger of his life whenever he went out, after he was taken by the rebel party, and that he would get off as ſoon as he could, but that he did not know which way to ſcheme his getting away: I then took him to Enniſcorthy, and thence to Scollough, and met many parties on the road: we went two miles out of the way, to avoid being taken by them: he ſaid, if he could get into Carlow, he ſhould be quite ſafe there, as he could get military to protect him: witneſs heard two or three ſhots fired after he left him: was afraid he had been ſhot, and he himſelf was in terror of his life on returning back.

Q. Did not my ſervant who was with me tell you ſince, we were fired at?

A. He did tell me ſo. On my return through Enniſcorthy, I was aſked what was become of my maſter; I told them that he was gone to Roſs, as he heard his uncle was killed; they then ſaid if they had known that, that he ſhould not be permitted to go there alive.

Q. Do you recollect the rebels coming to my houſe during the rebellion, and forcing me away with them?

A. I do.

Q. Do you recollect me once being ſo ſure of being murdered by them, that I gave you my watch, purſe, and letter to my mother, in caſe I ſhould be murdered by them?

A. You gave me eighteen guineas, and a gold watch, and a letter, and you ſaid that that was the laſt letter you received from your mother, and to deliver it in caſe you was killed.

Q. Did you not think me in great danger of being murdered by the rebels during the rebellion?

A. I did.

Q. Did you ever hear that I had any commands amongſt the rebels?

A. Never

A. Never did hear you had.

Q. Do you know that the day I was taken to Vinegar Hill, whether it was not my intention to eſcape by Newtown Barry, if not prevented?

A. You told me you would if you could; I thought it impoſſible, as every paſs was guarded.

Q. Do you recollect the day of the month I made my eſcape?

A. I do not recollect the day of the month, but that I was deſired to order two beds for the priſoner, and Captain M'Manus in Wexford, but that Mr. Keugh would not permit Captain M'Manus to remain there, and ſent him away; it was ſhortly afterwards you eſcaped *.

Court.—About what time was it that the rebels came and forced the priſoner from his houſe, and how ſoon after was it that you aſſiſted in effecting his eſcape?

A. It was about four or five days after Wexford was taken that he was forced from his houſe, and it was about four days after that I aſſiſted in making his eſcape, to the beſt of my recollection.

Mrs. (Robert) Hughes, ſworn.

Priſoner.—Had you an opportunity of ſeeing me during the rebellion, of knowing whether or not I was ſatisfied with my ſituation?

A. I had the pleaſure of ſeeing you, and believe you was very much diſſatisfied with your ſituation indeed. You was in my houſe four or five nights, during which time the rebels were continually firing at the houſe, ſo much ſo as to tear the ſhop.

I went to the priſoner, and ſaid, what ſhall I do, the priſoner ſaid, he was ſorry for us all, cried, and ſaid it was out of his power to appeaſe the mob, as he was in danger of his own life.

* Captain Hay eſcaped nearly a fortnight before the king's troops retook Wexford, while the whole territory of the county Wexford was in poſſeſſion of the rebels. His communication with Captain Macmanus, deſcribed in Captain Macmanus's teſtimony, took place before the victory at Roſs was known, before the rebels had experienced a ſingle reverſe.

Counſellor

Counſellor Mahon, ſworn.

Priſoner.—Are you a barriſter, and do you know my reaſon for laſt coming to this country?

A. I am a barriſter, and was the priſoner's confidential lawyer, whom he conſulted on all his buſineſs: there were ſuits between him and his elder brother Mr. Edward Hay, who was diſinherited by his father: his father left his property to the priſoner, who was his third ſon: he left the priſoner a conſiderable property, ſubject to debts and family incumbrances. In the abſence of the priſoner, the elder brother took a kind of forcible poſſeſſion of the houſe and demeſne, there were ſuits inſtituted, the elder brother, and Mr. Edward Fitzgerald were the priſoner's principal opponents as to his property in this country.

I arrived in Dublin from the county of Galway, about the 23d day of April laſt, the firſt day of laſt Eaſter Term; and on the 24th was much ſurprized at Mr. Edward Hay's calling at my houſe, and offering to leave all matters in diſpute, between him and the priſoner to my arbitration. I at firſt objected, and told him the award that I ſhould be inclined to make: I thought that he would no longer preſs my being the arbitrator, as I told him the award ſhould be againſt him: he returned the next day, and told me he would acquieſce in any award I would make. In ſome time after I made my award, and among other things awarded, that he ſhould give up a poſſeſſion of the houſe and demeſne to the priſoner on the 1ſt day of May after: he agreed, on condition that the furniture in the houſe ſhould remain there till he had an opportunity of ſelling it by auction. Some time during the month of May this was reduced to writing, and finally ſettled on the 27th or 28th of April, at the houſe of Mr. Bowman his attorney. I told the priſoner he ought to ſet off for the county of Wexford to take poſſeſſion on the 1ſt of May; he did not wiſh to go; he told me he thought a ſervant's taking poſſeſſion would anſwer equally as well; from my know-

knowledge of his affairs I expoſtulated with him, and preſſed him to go; I conſidered that the furniture of Mr. Edward Hay remaining in the houſe during the month of May would be ſtill a kind of poſſeſſion, and that it would not be prudent for him not to go to the country on the 1ſt of May to receive the attournment of the tenants, and to take in perſon the poſſeſſion of his eſtate. If I did not exert myſelf very much for theſe and other reaſons, I am certain he would not at that time come to this county, for he was very anxious about a large ſum of money that was lodged in the agent's hands for the purpoſe of purchaſing a troop of dragoons; and I alſo was informed that he was attached to a young lady, which I believe was a principal reaſon for his wiſhing to remain in Dublin.

Q. Did I conſult you about calling for a court martial, and did I demand one?

A. In a few days after he was at the Caſtle, and ſtated to Lord Caſtlereagh and Mr. Marſden, as I was informed, that after being engaged in two actions againſt the rebels, and being taken priſoner by them, and being obliged through terror and fear of his life to appear to act with them, and after giving every other information that Mr. Marſden required of the then ſtate of the county Wexford, he conſulted with me, (as he was obliged to march with them) whether he ought not as an officer in his Majeſty's ſervice to call for a court martial: I told him as he ſtated facts publicly, as they actually were; and it being notoriouſly known that he was obliged through terror of his life to march with the rebels until he made his eſcape; that I thought the adminiſtration of the country would call him to a court martial, or inſtitute an enquiry if they thought his conduct deſerved it, and that he need not demand it himſelf. In a few days after I underſtood that the democratic party of the city of Dublin conſidered the priſoner as a great raſcal for ſtating in his information that ſome of his own family were engaged in the rebellion. But in a ſhort time after theſe things took another

ther turn, and I heard many people ſay, that he ought not to be truſted, as he was a Roman Catholic; and they expreſſed their ſurprize that he was not taken up: I mentioned this to the priſoner, and I believe it was about two days after General Lake returned from Wexford to Dublin; I told him that I had changed my opinion, and would adviſe him to demand a court martial on his conduct. I met him walking on Sunday with Colonel Maxwell, who I was informed was of the ſame opinion; and on Monday morning he went from my houſe to General Lake to demand a court martial: I underſtand on ſtating his reaſons to General Lake, the General thought it unneceſſary; and I believe that General Lake wrote to General Hunter that the priſoner demanded a court-martial.

Court.—How long have you known the priſoner, and what were and are his political principles, and were they loyal?

A. I firſt knew the priſoner on his return from the Continent, near five years ago: I think from the intimacy that ſubſiſted between us, I could in thoſe times form a decided opinion in my own mind as to his loyalty and political principles. I conſider him as loyal a man in his principles, and did conſider him, as any gentleman I was acquainted with. He had all that zeal and attachment to his king that diſtinguiſhed every gentleman of the army I ever had the honor of being acquainted with. On his return from England, about twelve months ago, a general election then going on, he told me from what he heard in England and Ireland, he thought it the duty of every man to come forward to ſupport the king and thoſe who ſupported the king, and therefore ſaid he would give any intereſt he had in the county Wexford to Lord Loftus. He received a letter from the county Wexford, ſtating, that his brother, who was an oppoſition man, was endeavouring to make his tenants vote another way. In conſequence thereof, he left Dublin that night, and arrived in Wexford time enough, as I believe, to prevent his brother taking away the votes, and heard that the votes were given to

Lord

Lord Loftus, he left Dublin the 30th of April laſt, and the day before I heard him ſay that he would make uſe of every exertion of his to keep the county of Wexford quiet, it being reported that it was proclaimed or going to be proclaimed, and that he would get all his tenantry to take the oath of allegiance and give up their arms; and I muſt ſay that thoſe who know me well, know this, that if the priſoner was a diſloyal man, habits of great friendſhip and intimacy could not have ſubſiſted between him and me.

Counſellor Lehunte, ſworn.

Priſoner.—How long have you known me intimately, and from your knowledge of me, do you think me capable of being voluntarily engaged in rebellion?

A. I have known him for upwards of ten years, and from every obſervation, and I had many intimate opportunities of making a great many, I think him utterly incapable of joining any aſſociation contrary to the preſent conſtitution, and of being voluntarily engaged in rebellion; his expreſſions were always of the higheſt attachment to the king and government.

MY LORDS AND GENTLEMEN,

I cannot think of reſting my caſe without returning my thanks to the court, for the patience and impartiality with which they have inveſtigated it. To the principal facts I have many more witneſſes in my power, but decline producing them, from an humble confidence that I have eſtabliſhed in evidence what I ſtated in my defence; and that all the evidence adduced by the proſecution is conſiſtent with that ſtatement.

That I was for a moment the unhappy involuntary victim of an imperious neceſſity, and that previous and ſubſequent to the compulſion under which I ſuffered, all

my conduct has been inconsistent with rebellion or disaffection.

I leave to this honourable tribunal my honor, for compared to it, I little value my life.

SENTENCE.

The Court having maturely and deliberately considered the whole of the evidence, for and against the prisoner, Captain Philip Hay of the 3d regiment of foot, and his defence, is of opinion, that the charges against him have been proven; but it evidently appearing that the prisoner's conduct proceeded from arbitrary compulsion, the Court does therefore honourably acquit him.

THOMAS O'NEIL, Deputy Judge Advocate.

ANCRAM, Colonel. M. L. Cavalry, President.

Which sentence was approved by his Excellency Marquis Cornwallis, Lord Lieutenant of Ireland.